

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

GARY L. SMITH,

Petitioner,

v.

**Civil Action No. 3:05CV28
(Judge Broadwater)**

KEVIN J. WENDT, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert, dated July 22, 2005. The petitioner filed Objections to the Report and Recommendation on August 15, 2005. Due to Petitioner's assertion that his notice of the Magistrate's Report and Recommendation was delayed by mail transfer, the Objections are deemed timely filed. After conducting a *de novo* review of the above, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted.

The Petitioner objects to the Magistrate's statutory interpretation and resulting affirmation of the Bureau of Prisons' calculation of his Good Conduct Time. The Court finds that the Magistrate cites on point case law from the Fourth Circuit Court of Appeals, the Fourth Circuit interpretation of the statute is controlling in this jurisdiction, and the interpretation and resulting Good Conduct Time calculations are reasonable and proper. See, Yi v. Fed. Bureau of Prisons, 412 F.3d 526, 534 (4th Cir. 2005).

The Court accordingly **ORDERS** that the Petitioner's § 2241 petition is **DENIED** and

DISMISSED WITH PREJUDICE based upon the facts and reasoning as set forth in the Magistrate's Report and Recommendation. It is further **ORDERED** that this action be and is hereby **STRICKEN** from the active docket of this Court.

The Clerk is directed to transmit true copies of this Order to the Petitioner and all counsel of record herein.

DATED this 24th day of March 2006.



W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE